

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**ILLINOIS COMMERCE COMMISSION
ON ITS OWN MOTION,**

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Docket No. 01-0539

**IMPLEMENTATION OF SECTION 13-712(g)
OF THE PUBLIC UTILITIES ACT.**

THE WIRELESS COALITION'S BRIEF ON EXCEPTIONS

May 23, 2003

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The Wireless Coalition, which consists of PrimeCo Personal Communications (n/k/a U. S. Cellular), U. S. Cellular and VoiceStream Wireless (n/k/a T-Mobile), fully supports the findings in the Hearing Examiner's Proposed Order (the "HEPO") regarding the need for the Illinois Commerce Commission ("Commission") to regulate the provision of wholesale special access telecommunications services. The Wireless Coalition also supports the wholesale special access-related provisions of the Hearing Examiner's proposed Part 731 rule ("Proposed Rule"). However, as set forth herein, the Wireless Coalition takes exception to certain aspects of the HEPO and Proposed Rule. Therefore, in accordance with the HEPO, and pursuant to Section 200.830 of the Commission's Rules of Practice (83 Ill. Admin. Code 200), the Wireless Coalition respectfully submits this Brief on Exceptions.

I. INTRODUCTION

Section 13-712(g) of the Public Utilities Act (the "Act"), 220 ILCS 5/13-712(g), states:

The Commission shall establish and implement carrier to carrier wholesale service quality rules and establish remedies to ensure enforcement of the rules.

Pursuant to Section 13-712(g), the Commission initiated this rulemaking proceeding to develop and establish 83 Ill. Adm. Code Part 731 Wholesale Service Quality for Telecommunications Carriers.

In the HEPO, the Hearing Examiner correctly found that Section 13-712(g) is intended to foster competition in Illinois' telecommunications market and ensure that Illinois consumers can obtain quality telecommunications services from all types of telecommunications carriers. After finding that the quality of available wholesale special access services – which are essential to the provision of wireless telecommunications services – is poor, the Hearing Examiner correctly determined that without regulation, Illinois consumers of wireless telecommunications services will continue to experience the type of problems that result from poor quality wholesale special access services, including poor voice quality and an inability to make and receive telephone calls. Consistent with these findings, the HEPO and the Proposed Rule require Illinois' two main providers of wholesale special access services, SBC/Ameritech and Verizon, to file wholesale service quality plan tariffs that include performance measures, standards and remedies for wholesale special access services.

Both the HEPO and the Proposed Rule are fully consistent with Illinois law, reflect sound regulatory policy, and are supported by the substantial weight of the evidence in the record. However, there are certain aspects of the HEPO and the Proposed Order that the Wireless Coalition respectfully requests the Commission to modify. The Coalition's recommended modifications will eliminate potential sources of ambiguity, correct inadvertent errors and ensure that the implementation of service quality rules and remedies for wholesale special access services is not unfairly or unnecessarily delayed. The Wireless Coalition respectfully recommends that the

Commission adopt the HEPO and the Proposed Rule with the modifications proposed by the Wireless Coalition.

II. ARGUMENT

A. TO EXPEDITE THE IMPLEMENTATION OF NECESSARY SERVICE QUALITY RULES AND REMEDIES FOR WHOLESALE SPECIAL ACCESS SERVICES, THE COMMISSION SHOULD EXPAND THE PROVISIONS OF THE PROPOSED RULE THAT APPLY TO LEVEL 1 CARRIERS

1. Section 731.310 of the Proposed Rule Should Require Level 1 Carriers to Include Maintenance-Related Performance Measures in Their Wholesale Service Quality Plans

Wholesale special access services are services relating to circuits used to provide high speed connections between critical facilities in wireless telecommunications networks. (See Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 2:57-64, 3:57-59 and 62-68, 6:110-11 and Ex. 3.0 at 4:68-74 and Ex. 5.0 at 4:64-5:67 and Ex. 7.0 at 6:94-99.)

In Illinois, wholesale special access services are almost exclusively provided by SBC/Ameritech and Verizon, the two largest incumbent local exchange carriers in the State. Thus, the members of the Wireless Coalition (and other carriers that utilize wholesale special access services) are dependent on SBC/Ameritech and Verizon ("Level 1 carriers") for wholesale special access services. (See Wireless Coalition Ex. 1.0 at 3:53-57 and Ex. 2.0 at 3:57-59 and 63-68 and 6:110-11 and Ex. 5.0 at 4:64-5:67 and Ex. 7.0 at 6:94-99; Testimony of Lester Tsuyuki ("Tsuyuki"), 8/13/02 Transcript ("Tr.") at 813:20-815:8.)

In view of these circumstances and the substantial record evidence showing that the quality of wholesale special access services provided by Level 1 carriers is poor, the Hearing Examiner correctly found that there is a need to regulate wholesale

special access services. (See HEPO at p. 39 (“The evidence . . . demonstrates a need for regulation of wholesale special access services. Without regulation, consumers will continue to experience poor voice quality and phone calls that they are unable to complete.”).) Accordingly, the HEPO requires Level 1 carriers to include provisions relating to wholesale special access services in their wholesale service quality plans (“Plan” or “Plans”), and Section 731.310 of the Proposed Rule specifically states that Level 1 carriers must include “wholesale special access measures for ordering, provisioning, and repair”. (See HEPO at p. 37 and Proposed Rule at § 731.310.) For the reasons set forth below, Level 1 carriers also should be required to include maintenance-related wholesale special access measures in their Plans.

As previously noted, the evidence in the record shows that the quality of wholesale special access services provided by Level 1 carriers is poor. In particular, the evidence shows that wireless carriers experience unreasonable delays and poor quality performance relating to all aspects of such service, including ordering, provisioning, *maintenance* and repair. (See Wireless Coalition Ex. 1.0 at 4:74-83 and 85-87, 6:127-8:172 and Ex. 2.0 at 2:27-33 and 35-37, 5:91-94, 6:111-12, 8:172-10:198 and Ex. 3.0 at 3:64-4:74 and Ex. 5.0 at 4:49-51, 7:129-8:140 and 148-49, 9:154-55, 161-62, and 167-68 and Ex. 6.0 at 5:76-77 and Ex. 7.0 at 5:83; Tsuyuki, 8/13/02 Tr. at 846:11-19; *see also* Verizon Ex. 6.0 at 7:123-24; HEPO at p. 37-38.)¹

¹ The evidence also shows that as a result of poor quality wholesale special access services, wireless customers may experience dropped telephone calls, poor voice quality on their calls and/or a complete inability to place or receive calls. (See Wireless Coalition Ex. 1.0 at 5:90-93 and Ex. 2.0 at 6:113-14 and Ex. 6.0 at 6:107-7:113 and Ex. 7.0 at 6:103-07; Tsuyuki, 8/13/02 Tr. 797:1-11; *see also* HEPO at p. 37.) These types of service problems cause wireless customers to negatively regard their wireless providers and cause wireless carriers to lose significant revenue, incur unnecessary expense and experience greater difficulty competing in Illinois’ telecommunications market, all to the detriment of Illinois consumers. (See Wireless Coalition Ex. 1.0 at 5:90-98, 9:181-83 and 186-87 and Ex. 2.0 at 2:27-33 and 35-36, 6:111-12 and 119-29, 12:258-61 and Ex. 6.0 at 5:76-77, 6:108-7:113, 7:114-21 and Ex. 7.0 at 6:103-07, 7:112-13; Tsuyuki, 8/13/02 Tr. 797:1-11, 798:3-5 and 13, 832:19; *see also* HEPO at p. 37-38.)

Accordingly, like performance measures for ordering, provisioning and repair, performance measures for maintenance should also be mandatory.

The manner in which “maintenance” is defined and used in the Proposed Rule further supports this conclusion. In the Proposed Rule, the word “maintenance” is defined, together with the word “repair”, as a single term meaning:

actions taken or functions used to create trouble reports,
view or determine trouble report status and trouble report
history, receive proactive status on trouble reports, and
clear and close trouble reports.

(See Proposed Rule at § 731.105 (defining “maintenance and repair”; the words “maintenance” and “repair” are not separately defined in the Proposed Rule).)²

Further, Section 731.305(a) of the Proposed Rule states that wholesale service quality plans must include, “[a] comprehensive set of wholesale measures and standards covering all necessary parts of a carrier’s interaction with their wholesale customers includ[ing], but not be limited to, the following activities; pre-ordering, ordering, provisioning, *maintenance* and repair, billing and change management.” (See Proposed Rule at § 731.305(a) (emphasis added).)

Finally, as set forth in the Proposed Rule, even Level 2 carriers, which are required to measure significantly fewer aspects of their performance than Level 1 carriers (see Subpart F of the Proposed Rule), are required to measure their performance of “*maintenance* and repair” services. (See Proposed Rule at § 731.610(c) (emphasis added).)

² Relatedly, the Proposed Rule’s definition of “measure” shows that maintenance-related performance measures are typical. (See Proposed Rule at § 731.105 (defining the word “measure” and noting that “[m]easures are often based on the pre-ordering, ordering, provisioning, *maintenance* and repair, or billing functions used to deliver the service.”) (emphasis added).)

Based on the foregoing, Section 731.310's exclusion of any reference to maintenance-related performance measures appears to be an inadvertent oversight. Either way, however, to avoid unnecessary ambiguity or confusion, the Commission should amend Section 731.310 of the Proposed Rule to require Level 1 carriers to include maintenance-related performance measures in their Plans.

Exception 1: *The second sentence of Section 731.310 of the Proposed Rule should be revised to state:*

"The services to be covered for a Level 1 carrier shall include wholesale special access services and shall include wholesale special access measures for ordering, provisioning, maintenance and repair."³

For the same reasons, the Commission also should amend the quotation of Section 731.310 that appears on page 48 of the HEPO to include the word "maintenance" and should include the word "maintenance" in the second line following that quotation.

Exception 2: *On page 48 of the HEPO, the quotation of Section 731.310 of the Proposed Rule should be revised to state:*

"The services to be covered for a Level 1 carrier shall include, but not be limited to . . . wholesale special access services and shall include wholesale special access measures for ordering, provisioning, maintenance, and repair."

Exception 3: *On page 48 of the HEPO, subject to Exception 4, the first sentence following the quotation of Section 731.310 should be revised to state:*

"Thus, the Rule requires Level 1 carriers to develop measures and remedies for the ordering provisioning maintenance and repair of wholesale special access circuits."

³ In the "Exceptions" listed in this Brief, text that the Wireless Coalition recommends that the Commission insert into the HEPO or Proposed Rule is underscored. Text that the Wireless Coalition recommends that the Commission delete is lined out.

2. Level 1 Carriers Should Be Required to Include Common Wholesale Special Access-Related Performance Measures in Their Plans

In this proceeding, the Wireless Coalition recommended that the Commission include in its Part 731 Rule each of the wholesale special access-related performance measures, standards and remedies described in Appendix A to the Coalition's Initial Brief. In the alternative, the Wireless Coalition recommended that the Commission at least incorporate into its Part 731 Rule the Coalition's proposed performance measures, leaving it to Level 1 carriers to propose corresponding performance standards and remedies. (See Wireless Coalition's Initial Brief at p. 28 and Appendix C thereto.) The Wireless Coalition hereby renews its alternative request.

As demonstrated below, including the common and clearly reasonable performance measures proposed by the Wireless Coalition in the Proposed Rule is fully supported by the evidence in the record. Further, incorporating such measures into the Proposed Rule will substantially facilitate prompt implementation of service quality rules for wholesale special access services and will not prejudice Level 1 carriers in any way.

All of the wholesale special access-related performance measures proposed by the Wireless Coalition are familiar to Level 1 carriers, and Level 1 carriers voluntarily utilize more than half of these measures to track their performance. For the convenience of the Commission, the Wireless Coalition has included as an Appendix to this Brief on Exceptions a chart comparing the Wireless Coalition's proposed performance measures with performance measures included in SBC/Ameritech's

monthly performance reports⁴ and measures that Verizon witness Jerry Holland (“Holland”) specifically testified that Verizon uses.⁵

The Level 1 carriers’ voluntary use of the performance measures identified on page 1 of the Appendix shows that Level 1 carriers regard these performance measures as both appropriate and reasonable. Indeed, SBC/Ameritech witness Richard Dobson (“Dobson”) described the SBC/Ameritech performance measures included on page 1 of the Appendix as “traditional provisioning and maintenance” measures and further admitted that SBC/Ameritech can and does report on each of these “traditional” measures. (See Dobson 7/24/02 Tr. at 609:6 - 610:9.) Similarly, Verizon witness Holland described certain of the performance measures on page 1 of the Appendix (specifically, “on time performance [and] mean time [to] repair”) as “typical” measures and also admitted that Verizon tracks the number of days installations are late, the percentage of time its network is available and its performance with respect to firm order confirmations, which also are referenced and/or included in the Appendix. (See Holland, 7/23/02 Tr. at 225:8-10; Appendix at pp. 1-2.)

The performance measures on page 2 of the Appendix, some of which Level 1 carriers may not currently utilize, are closely related to the measures they do use. (*Compare* measures on pages 1 and 2 of the Appendix.) Thus, tracking performance in accordance with these additional measures will not unduly burden Level 1 carriers. Importantly, these measures are necessary for the Wireless Coalition – and this Commission – to fully evaluate the wholesale special access services-related performance of Level 1 carriers and more specifically identify sources of particular

⁴ SBC/Ameritech provides at least 69 of its wholesale special access customers with monthly performance reports. (See HEPO at p. 39 (citing Ameritech Initial Brief at 13-15).)

⁵ The chart in the Appendix attached hereto is essentially the same chart that was attached to the Wireless Coalition’s Reply Brief, filed October 18, 2002.

performance problems and deficiencies. (See Appendix at p. 2.) Also, with respect to all but two of these measures, there should be no corresponding remedy provision; therefore, Level 1 carriers will not be subject to multiple remedies for the same performance deficiency.

Based on the substantial similarity of many of the Wireless Coalition's proposed performance measures and performance measures used by the Level 1 carriers (see Appendix at p. 1) and based on the ease and importance of tracking performance with respect to other related aspects of performance (see Appendix at p. 2), the reasonableness of the Wireless Coalition's proposed performance measures cannot be seriously challenged.⁶ Thus, there is no legitimate basis on which Level 1 carriers should object to the identification and definition of the Wireless Coalition's proposed performance measures in the Proposed Rule, particularly if Level 1 carriers have the ability to prove that any one or more of the measures should not be included in their Plans.

Further, as indicated above, incorporating the common performance measures listed in the Appendix into the Proposed Rule will further the legislative purpose of fostering the development of Illinois' telecommunications market and ensuring that Illinois consumers can obtain quality telecommunications services from all manner of providers. (See HEPO at p. 35 ("including wholesale special access services in the Rule promotes competition in Illinois and it helps ensure that Illinois consumers

⁶ The reasonableness of the proposed performance measures is further evidenced by the manner in which they were developed. The Wireless Coalition based the performance measures in the Appendix on its members' long experience in and dealings with Level 1 carriers in Illinois' telecommunications market and other markets throughout the Nation, their familiarity with the technology Level 1 carriers utilize to provide wholesale special access services, their business needs, and their knowledge of the capabilities of Level 1 carriers *as expressed to them by Level 1 carriers*. (See e.g., Wireless Coalition Ex. 1.0 at 1-5 and 7:151-52 ("In most every case, Ameritech has told PrimeCo that if facilities are available, circuits can be provisioned in 15 days.") and Ex. 2.0 at 1-7 and Ex. 2.1 and Ex. 3.0 at 1-2 and Ex. 4.0 at 1-3 and Ex. 5.0 at 2-6 and Ex. 6.0 at 2-8 and Ex. 7.0 at 2-7.)

receive adequate phone service, the enunciated goal of Section 712. (220 ILCS 5/13-712(a)). Therefore, inclusion of wholesale special access services in the Rule helps foster an obvious goal of [the] legislature – to ensure that consumers receive reliable telecommunications service that is not substandard.”)

Also, including common performance measures in the Proposed Rule will help reduce the potential number of disputes that may delay the implementation of service quality rules for wholesale special access services and thus will speed implementation of such rules – a goal the Commission should seek to achieve.

Currently, there are no comprehensive and generally applicable performance measures, standards and remedies for wholesale special access services in effect. (See Dobson, 7/24/02 Tr. at 611:10-621:4; Holland, 7/23/02 Tr. at 225:3-226:22; Verizon witness Faye Raynor, 7/23/02 Tr. at 260:21-261:4.) Further, no such rules will take effect until Level 1 carriers file their Plans with the Commission, which they are not required to do until April 1, 2004 – over nine months from now and over two years and eight months from the date the Commission initiated this rulemaking proceeding. (See Proposed Rule at § 731.205(a).)⁷ Thus, until Level 1 carriers file their Plans, there will be no rules prompting them to improve the quality of their wholesale special access services or deterring them from continuing to provide poor quality wholesale special access services.

When Level 1 carriers file their Plans, the Commission will be considering complex issues regarding performance measures, standards and remedies for wholesale special access services for the very first time. In the event the wholesale special access-related performance measures, standards and remedies included in the

⁷ As discussed in Section 3 of this Brief on Exceptions, the Commission should require Level 1 carriers to file their Plans on or before January 2, 2004. (*Infra* at pp. 17-19.)

Plans filed by Level 1 carriers are inadequate, a significant amount of time may pass before disputes regarding their proposals are resolved and wholesale special access services-related performance measures, standards and remedies take effect. While such disputes are pending, the absence of service quality rules for wholesale special access services will continue to detrimentally affect the ability of wireless carriers to compete in Illinois' telecommunications market.

Including common wholesale special access-related performance measures in the Proposed Rule also will ensure that Plans filed by Level 1 carriers will include essential performance measures, *i.e.*, measures necessary to incent Level 1 carriers to significantly improve the quality and reliability of their wholesale special access services.

Further, providing direction regarding measures Level 1 carriers should use to report on their performance, which SBC/Ameritech expressly requested (*see* Ameritech Ex. 1.0 at 22:538-44) will ensure that Level 1 carriers develop performance standards and remedies that correspond to such performance measures *prior* to filing their Plans rather than after a contested hearing initiated to determine the threshold question of whether one or more of the common measures should even be included in a Plan.

If the Proposed Rule does not identify and define common and essential performance measures, it is unlikely that both Level 1 carriers' Plans will include and consistently define such measures. If they do not, wireless carriers may unfairly and unnecessarily be forced to participate in two separate proceedings to accomplish the same goal, *i.e.*, ensuring that the quality of wholesale special access services provided by Level 1 carriers will enable wireless carriers to effectively and efficiently compete in Illinois' telecommunications market.

For these reasons, the Commission should revise the “Commission Analysis and Conclusions” set forth on pages 47-48 of the HEPO to provide for the inclusion in the Proposed Rule of the performance measures proposed by the Wireless Coalition. (See Appendix.)

Exception 4: On pages 47-48 of the HEPO, the “Commission Analysis and Conclusions” section should be revised as follows:

“We note that Level 1 carriers voluntarily use some of the performance measures the Wireless Coalition proposes. Thus, there can be no real dispute regarding the reasonableness of those measures. The other measures proposed by the Wireless Coalition are closely related to the measures used by the Level 1 carriers. Having information regarding the Level 1 carriers’ performance pursuant to such measures will enhance the Commission’s ability, and the ability of carriers who purchase wholesale special access services, to evaluate and understand the Level 1 carriers’ performance in connection with wholesale special access services. Accordingly, it also is reasonable to include these performance measures in the Rule.

Further, there are significant policy reasons supporting inclusion of all of the Wireless Coalition’s proposed performance measures in the Rule. For example, including the performance measures will reduce the number of potential disputes that may unnecessarily delay implementation of service quality rules for wholesale special access services. Also, including the measures in the Rule will ensure that Level 1 carriers develop corresponding standards and, where appropriate, remedies for these presumptively reasonable performance measures before rather than after filing their plans. Accordingly, to expedite the implementation of service quality rules and remedies for wholesale special access services, Level 1 carriers should be required to include at least the following performance measures in their plans: FOC Dates Met, New Circuit Failure Rate, Failure Rate, Repair Time, Percentage of Trouble Reports Resolved Within 3 Hours, Repeat Failure Rate, Network Availability, Chronic Failure, Days Late, Engineering Complete, FOC, FOC/EC Past Due and Past Due Circuits. However, for good cause shown, Level 1 carriers should be allowed to delete any one or more of these measures from their plans.

We further note that there was not enough evidence presented to establish the reasonableness of the standards and remedies proposed by the Wireless Carriers. For example, the Rule proposed by the Wireless Carriers requires provision of a Firm Order Confirmation no later than three business days from the date on which the requesting carrier orders a wholesale special access service. (Wireless Initial Brief, Ex. A, Sec. 310(b)). There is no evidence indicating that it is reasonable to require an ILEC to provide a Firm Order Confirmation within three business days. We also note that the testimony established that the circuits are highly

specialized, that is, they are tailored to meet the needs of the requesting carrier, which is some indication that it takes time to provision such services.

We are concerned, as is Staff, that we will be imposing rules on carriers without adequate evidence that such rules are reasonable. Accordingly, at this time, we decline to adopt the Wireless Coalition's proposed wholesale special access services-related performance standards and remedies.

As for Level 2 carriers, as Staff points out, at this time, the amount of Wholesale Special Access requests of Level 2 carriers does not appear to be sufficient to justify establishing standards applicable to Level 2 carriers. We therefore decline to incorporate the Wireless Coalition's revised Level 2 performance standards and remedies into the Rule."

Relatedly, the Commission should revise its description of the Wireless Coalition's position regarding its proposed performance measures, standards and remedies.

Exception 5: *On page 46 of the HEPO, the Commission should revise the paragraph that appears under the heading "The Position of the Wireless Coalition" as follows:*

"The Wireless Coalition proposes its own extensive special access-related performance measures, standards and remedies for Level 1 and Level 2 carriers. (See, Wireless Initial Brief, Appendix A). In the alternative, for various policy reasons, the Wireless Coalition proposes that the Commission at least incorporate its proposed performance measures into the Rule, noting that Level 1 carriers already voluntarily utilize many of the measures. With respect to measures already in use, the Wireless Coalition argues that Level 1 carriers cannot legitimately contest the reasonableness or appropriateness of the measures. The Coalition also avers that its performance measures are reasonable because they are consistent with its members' experiences in the Illinois market, their familiarity with the technology of Level 1 carriers, and information provided to them by Level 1 carriers. (Wireless Reply Brief at 14-16). The Wireless Coalition further argues that certain of the performance standards it proposes are similar to standards contained in evidence presented by Level 1 carriers and that its proposed remedies are reasonable."

In accordance with the foregoing, the Commission should also revise certain sections of the Proposed Rule. Specifically, the Commission should revise Section 731.315 of the Proposed Rule to incorporate the common performance measures identified in the Appendix. Additionally, to protect Level 1 carriers, the Commission

should include in Section 731.315 a provision permitting Level 1 carriers, for good cause shown, to modify or delete any such measures that are included in their Plans.

Exception 6: *Section 731.315 of the Proposed Rule should be revised to state:*

- a) Each wholesale service quality plan shall include, at least, the following performance measures: FOC Dates Met, New Circuit Failure Rate, Failure Rate, Repair Time, Percentage of Trouble Reports Resolved Within 3 Hours, Repeat Failure Rate, Network Availability, Chronic Failure, Days Late, Engineering Complete, FOC, FOC/EC Past Due and Past Due Circuits. For good cause shown, the Commission may allow a Level 1 carrier to delete one or more of these measures from its plan.*
- b) Each wholesale service quality plan also shall include other measures and standards consistent with the requirements of Section 731.305(a).*
- c) The specific measures and standards included in each wholesale service quality plan shall be as determined by the Commission pursuant to 731.505. No measures or standards may be added, modified, or deleted from a wholesale service quality plan adopted by the Commission pursuant to Subpart E without the review and approval of the Commission.”*

The Commission also should include related definitions in the Proposed Rule and modify the Proposed Rule’s definition of “Firm Order Confirmation”.

Exception 7: The following definitions should be added to Section 731.105 of the Proposed Rule:

“Chronic Failure” means a wholesale special access circuit in connection with which a trouble report is opened on four separate occasions during any rolling twelve-month period (excluding CRTs).

“Customer Not Ready” or “CNR”, when used in connection with the provisioning of wholesale special access services, means a verifiable situation beyond the normal control of a provisioning carrier that prevents the provisioning carrier from completing an order for a wholesale special access service, including the following: a requesting carrier or another carrier is not ready; an end user is not ready; a connecting company or customer premises equipment is not ready.

“Customer Related Trouble” or “CRT”, when used in connection with the provisioning of wholesale special access services, means a verifiable situation where trouble is caused by the negligent or willful act of a requesting carrier, a malfunction of equipment owned by the requesting carrier, rescheduling of service appointments per the request of a requesting carrier or a wholesale emergency service situation.

“Days Late” means a measure of the average number of days during each month that wholesale special access circuits a provisioning carrier installs for a requesting carrier are installed after FOC/EC due dates (excluding CNRs).

“Engineering Complete” or “EC,” where facilities to complete a wireless wholesale special access service request are available to the provisioning carrier, means the date by which the provisioning carrier must complete all required engineering relating to an order for a wireless wholesale special access service (including both outside and inside engineering) and also must advise the requesting carrier of the date on which the service shall be installed. In the event facilities to complete a Wireless Wholesale Special Access service request are not available to a provisioning carrier, “Engineering Complete” or “EC” means the date by which the provisioning carrier must: (1) advise the requesting carrier of the facilities that are not available; and (2) provide the requesting carrier with a good faith estimate of the date on which the requested service shall be installed, which date shall not exceed 30 days from the “EC” due date unless the provisioning carrier provides the requesting carrier with a written and verifiable explanation of the reason why installation cannot be completed within 30 days of the “EC” due date.

“Failure Rate” means a measure of the percentage of a requesting carrier’s wholesale special access circuits, provisioned by a single provisioning carrier, that fail during each month (excluding CRTs), expressed as a percentage of the total number of wholesale special access circuits provisioned by the provisioning carrier as of the end of the month.

“Firm Order Confirmation” or “FOC”, with respect to services other than wireless wholesale special access services, means the document or electronic record by which a provisioning carrier notifies a requesting carrier that the service order has been received and what due date has been assigned. With respect to wireless wholesale special access services, “Firm Order Confirmation” or “FOC” means the document or electronic record by which a provisioning carrier notifies a requesting carrier of the date on which an ordered service shall be installed.

“FOC Dates Met” means a measure of the percentage of wholesale special access circuits installed by a single provisioning carrier on or before FOC due dates during each month (excluding CNRs), expressed as a percentage of the total number of FOC due dates falling due during the month.

“FOC/EC Past Due” means a measure of the number of a requesting carrier’s wholesale special access service orders in connection with which a provisioning carrier has not provided an FOC/EC as of the end of each month, excluding FOCs/ECs not yet falling due.

“Network Availability” means a measure of the percentage of time a requesting carrier’s wholesale special access circuits, provided by a single provisioning carrier, are not out of service during each month (excluding CRTs), expressed as a percentage of the total time available during the month on all Wholesale Special Access circuits provisioned by the provisioning carrier as of the end of the month.

“New Circuit Failure Rate” means a measure of the percentage of a requesting carrier’s new wholesale special access circuits (i.e., circuits installed for 30 days or less), provisioned by a single provisioning carrier, that fail during each month (excluding CRTs), expressed as a percentage of the total number of new wholesale special access circuits provisioned by the provisioning carrier as of the end of the month.

“Past Due Circuits” means a measure of the total number of wholesale special access circuits a provisioning carrier fails to install for a requesting carrier on or before the FOC/EC due date as of the last day of each month, excluding wholesale special access circuits that were not scheduled for installation during the month and excluding CNRs.

“Repair Time” means the period between the time a requesting carrier submits a trouble report relating to a wholesale special access circuit and the time at which the provisioning carrier closes the trouble report (excluding CRTs).

“Repeat Failure Rate” means a measure of the percentage of a requesting carrier’s wholesale special access circuits, provisioned by a single provisioning carrier, in connection with which more than one trouble report is opened during any thirty-day period (excluding CRTs), expressed as a

percentage of the total number of wholesale special access circuits provisioned by the provisioning carrier as of the end of each month.

(See Wireless Coalition's Initial Brief, Appendix A at § 731.105.)

Finally, the Commission should revise Section 731.320 of the Proposed Rule.

Exception 8: *At the end of the first sentence of Section 731.320 of the Proposed Rule, the Commission should insert the following sentence:*

"Notwithstanding the foregoing, wholesale service quality plans shall not include remedies for the following measures: Days Late, Engineering Complete, Firm Order Confirmation, Past Due Circuits."

3. The Commission Should Require Level 1 Carriers to File Their Plans On or Before January 2, 2004

As found by the Hearing Examiner, and as plainly demonstrated by the evidence regarding (i) the importance of wholesale special access services, (ii) the poor quality of the wholesale special access services being provided by Level 1 carriers, and (iii) the detrimental affects of poor quality wholesale special access services on Illinois consumers and wireless carriers (see HEPO at p. 39; *supra* at 3-4), there is a clear need for prompt implementation of service quality rules for wholesale special access services. To speed the implementation of such rules, Level 1 carriers should be required to file their Plans as soon as possible, and in no event later than January 2, 2004. These carriers have been providing wholesale special access services for years and are intimately familiar with their own capabilities and the needs of carriers that purchase their services.

Moreover, Level 1 carriers have discussed specific wholesale special access-related performance measures and standards with such carriers on prior occasions (see WorldCom witness Karen Furbish, 7/23/02 Tr. at 108:15 – 110:10; Dobson, 7/24/02 Tr. at 575:5 – 576:16, 579:1-15), and through this proceeding, Level 1 carriers have been reminded and/or advised of the types of wholesale special access-related performance measures, standards and remedies that are necessary and

important to wireless carriers. Accordingly, there is no reason Level 1 carriers should be given more than nine additional months to file Plans with the Commission. Rather, Level 1 carriers should be required to file their Plans no later than January 2, 2004. Thus, the Commission should revise Section 731.205(a) of the Proposed Rule as follows:

Exception 9: *“On or before January 2, 2004, and every two years thereafter, every Level 1 carrier shall file with the Commission for review and approval a tariff containing its wholesale service quality plan as specified in, and pursuant to, Subparts B, C, D and E of this Part. For every filing date after January 2, 2004, if a Level 1 carrier proposes to maintain, without any additions, deletions or modifications, its existing tariff containing its wholesale service quality plan, the Level 1 carrier may file, in lieu of filing a new tariff, a verified statement confirming that it will maintain in effect, without any additions, deletions or modifications, its existing tariff until modified pursuant to this Part.”*

Also, the Commission should revise the first sentence of Section 731.230(b) of the Proposed Rule as follows:

Exception 10: *“For a carrier with a Preexisting Plan, its Preexisting Plan shall be its effective wholesale service quality plan from the effective date of this Part through the effective date of its tariff due to be filed on or before January 2, 2004, under Section 731.205.”*

Further, the Commission should make corresponding changes to related text in the HEPO.

Exception 11: *On page 10 of the HEPO, the second sentence of the “Background” section should be revised as follows:*

“Level 1 carriers must file their Wholesale Service Quality Plans and tariffs on January 2, 2004, and every 2 years thereafter for Commission review.”

Exception 12: *The last sentence that begins on page 15 of the HEPO and continues onto page 16 should be revised as follows:*

“However, the Rule requires submission of a Plan, with supporting tariff, on or before January 2, 2004, and use of a Level 1 carrier’s pre-existing Plan between the effective date of the Rule and January 2, 2004.”

Exception 13: On page 16 of the HEPO, the quotation of Section 731.205(a) of the Proposed Rule should be revised as follows:

“On or before January 2, 2004, and every two years thereafter, every Level 1 carrier shall file with the Commission for review and approval a tariff containing its wholesale service quality plan as specified in, and pursuant to, Subparts B, C, D and E of this Part. For every filing date after January 2, 2004, if a Level 1 carrier proposes to maintain, without any additions, deletions or modifications, its existing tariff containing its wholesale service quality plan, the Level 1 carrier may file, in lieu of filing a new tariff, a verified statement confirming that it will maintain in effect, without any additions, deletions or modifications, its existing tariff until modified pursuant to this Part.”

Exception 14: On page 16 of the HEPO, the quotation of the first sentence of Section 731.230(b) of the Proposed Rule should be revised as follows:

“For a carrier with a Preexisting Plan, its Preexisting Plan shall be its effective wholesale service quality plan from the effective date of this Part through the effective date of its tariff due to be filed on or before January 2, 2004, under Section 731.205.”

Exception 15: On page 16 of the HEPO, the first paragraph following the quotation of Section 731.230(b) of the Proposed Rule should be revised as follows:

“In this way, Ameritech is free to submit its Wholesale Service Quality Plan for Commission review when it sees fit, as long as it is not later than January 2, 2004. Thus, the Rule can no longer be said to impose any pre-existing Wholesale Service Quality Plan on a Level 1 carrier until such time as it makes its initial January 2, 2004 filing.”

4. The Commission Should Correct Matters in the HEPO That Are Inconsistent with the Evidence in the Record

In addition to the foregoing, there are certain aspects of the HEPO that should be corrected either to avoid confusion or to correct minor and/or inadvertent errors.

First, the HEPO inadvertently misstates one aspect of the position of carriers that purchase wholesale special access services. Specifically, the HEPO states that such carriers contend that they “use a considerable amount of *interstate* wholesale special access services”. (See HEPO at p. 29 (emphasis added).) As stated in other

sections of the HEPO and throughout the record, such carriers asserted that they use a considerable amount of *intrastate* wholesale special access services. (See *e.g.*, HEPO at p. 29 (citing position of Wireless Coalition).) To avoid any unnecessary confusion, the Wireless Coalition recommends that the Commission revise this typographical error.

Exception 16: *On Page 29 of the HEPO, the second sentence of the first paragraph of the “Commission Analysis and Conclusions” section should be revised to state:*

“Rather, they generally dispute the purchasing carrier’s contention that they use a considerable amount of intrastate wholesale special access services.”

Second, in discussing one of Verizon’s conclusions, the HEPO states that Verizon offered a single, unsupported, “factual” citation to support its conclusion that “wholesale special access services are not used to provision ‘basic local exchange services’.” (See HEPO at p. 35.) However, the “factual” contention identified in the HEPO, which appeared in the rebuttal testimony of Verizon witness Holland at lines 38-40, was stricken from the record as testimony based on a legal interpretation and conclusions regarding FCC regulations. (See 7/23/02 Tr. at 191:19 – 193:14.) Accordingly, the HEPO should be revised to state that Verizon failed to offer any support for the referenced conclusion.

Exception 17: *On page 35 of the HEPO, the first paragraph of the “Factual Arguments” section should be revised to state:*

“ Verizon provides no factual support for its conclusion that wholesale special access services are not used to provision ‘basic local exchange services’. This conclusion does not have a factual basis, and, therefore, we cannot consider it. [Citations omitted.]”

Third, the HEPO incorrectly indicates that because wireless carriers purchase wholesale special access services pursuant to private contracts, the service quality plans of Level 1 carriers do not apply to their purchases. (See HEPO at p. 38.) The

existing service quality plans of SBC/Ameritech and Verizon do not apply to the wireless carriers' purchases because those plans do not cover wholesale special access services. (See Dobson, 7/24/02 Tr. at 611:10-621:4; Holland, 7/23/02 Tr. at 225:3-226:22; Verizon witness Faye Raynor, 7/23/02 Tr. at 260:21-261:4.) Relatedly, the limited credits that SBC/Ameritech provides for poor wholesale special access-related performance only apply to wholesale special access services purchased under SBC/Ameritech's tariff, not services purchased under private contracts. (See Dobson, 7/24/02 Tr. at 611:10-612:4.) Accordingly, the HEPO should be corrected in this regard.

Exception 18: *On page 38 of the HEPO, the first sentence of the second paragraph should be revised to state:*

"The Coalition also points out that currently, most of its members purchase wholesale special access services pursuant to private contracts, thus, tariff credits for poor performance do not apply to the services they purchase."

Finally, the HEPO suggests that SBC/Ameritech's Wholesale Service Quality Plan includes at least some measures and remedies for wholesale special access services. (See HEPO at p. 38.) However, as stated above, neither SBC/Ameritech's nor Verizon's Plans include any provisions regarding wholesale special access services. Thus, the HEPO should be corrected in this regard.

Exception 19: *On page 38 of the HEPO, the second sentence of the second paragraph should be revised to state:*

"The Coalition further points to evidence elicited on cross examination of Ameritech and Verizon witnesses, that ILEC reporting to the wireless carriers is very limited, and, that the Level 1 carriers' existing Wholesale Service Quality Plans do not include any performance measures, standards or remedies for wholesale special access services."

III. CONCLUSION

For the benefit of all Illinois consumers of telecommunications services, wireless carriers must be able to effectively and efficiently compete in Illinois'

telecommunications market. The evidence shows that poor quality wholesale special access services have long impaired the ability of wireless carriers to do so by interfering with their efforts to consistently provide their customers with high quality, reliable wireless telecommunications services. Thus, there is a significant need for prompt implementation of service quality rules for wholesale special access services. To speed implementation of the necessary service quality rules, the Wireless Coalition respectfully requests that the Illinois Commerce Commission adopt the HEPO and the proposed Part 731 Rule with each of the modifications set forth in this Brief on Exceptions.

Dated: May 23, 2003

Respectfully submitted,

PRIMECO PERSONAL
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APPENDIX – COMPARATIVE CHART

WIRELESS COALITION'S PROPOSED MEASURES ⁸	AMERITECH'S CURRENT MEASURES ⁹	NOTES ¹⁰
“FOC/EC Dates Met” - a measure to track “the percentage of Wholesale Special Access circuits installed. . . on or before the FOC/EC due dates. . . .”	“On Time Performance (the rate of installation due dates met).”	Ameritech expressly describes “On Time Performance” as a “key” performance measure. (Ameritech Ex. 4.0 at 6:125-26.)
“New Circuit Failure Rate” – a measure to track “the percentage of a Requesting Carrier’s new Wholesale Special Access circuits (i.e., circuits installed for 30 days or less) . . . that fail during each month”	“Installation Quality (measured by the rate of “troubles” reported within 30 days of installation).”	Ameritech expressly describes “Installation Quality” as a “key” performance measure. (Ameritech Ex. 4.0 at 6:125-30.)
“Failure Rate” - a measure to track “the percentage of a Requesting Carrier’s Wholesale Special Access circuits . . . that fail during each month”	“Failure Rate (the percentage of circuits that experienced an out-of-service condition in the month).”	
“Repair Time” – a measure to track “the period between the time a Requesting Carrier submits a Trouble Report relating to a Wholesale Special Access circuit and the time at which the Provisioning Carrier closes the Trouble Report”	“Repair Restorable Time (average time to restore service for those circuits that fail).”	Ameritech expressly describes “Repair Restorable Time” as a “key” performance measure. (Ameritech Ex. 4.0 at 6:125-33.)
The Wireless Coalition proposed that “Repair Time must not exceed the length of time it takes a Provisioning Carrier to repair Wholesale Special Access circuits it provides to itself or any of its affiliates . . . and in any event must not exceed 3 hours.” (Wireless Coalition Br., Ex. A at § 731.310(j).)	“Percentage of Trouble Reports Restored within 3 Hours.”	
“Repeat Failure Rate” – a measure to track “the percentage of a Requesting Carrier’s Wholesale Special Access circuits . . . in connection with which more than one Trouble Report is opened during any thirty-day period”	“Repeat Reports (circuits for which trouble is reported within 30 days of a previous trouble report).”	
“Network Availability” – a measure to track “the percentage of time a Requesting Carrier’s Wholesale Special Access circuits . . . are not Out of Service during each month”	“Percentage of Network Availability (calculated by taking the total out of service time and dividing it by the total time all circuits are available).”	

⁸ Unless otherwise noted, see Wireless Coalition Br., Ex. A at § 731.105.

⁹ See Ameritech Ex. 4.0 at 4; see also *supra* at p. 8.

¹⁰ Because Verizon fails to provide monthly performance reports, no detailed comparison of the Wireless Coalition’s proposals and Verizon’s performance metrics can be made. However, based on Holland’s testimony, it is clear that Verizon tracks on-time installation performance, the number of days installations are late, network availability, mean time to repair, firm order confirmation and other wholesale special access measures. (See Verizon Ex. 6.0 at 9:178-81, 10:197-98; Holland, Tr. 7/23/02 Tr. 225:8-10.)

WIRELESS COALITION'S ADDITIONAL PROPOSED MEASURES ¹¹	
Proposed Metric	Notes
"Chronic Failure" - a measure to track "Wholesale Special Access circuit[s] in connection with which a Trouble Report is opened on four separate occasions during any rolling twelve-month period"	This proposed measure is simply an extension of Ameritech's "Repeat Reports" metric.
"Days Late" - a measure to track "the average number of days during each month that Wholesale Special Access circuits a Provisioning Carrier installs for a Requesting Carrier were installed after FOC/EC due dates. . . ."	This proposed measure is purely diagnostic and a corollary of Ameritech's "On Time Performance" metric.
"Engineering Complete" - "where facilities to complete a Wireless Wholesale Special Access service request are available [this measure tracks] the date by which the Provisioning Carrier must complete all required engineering relating to an order for a Wireless Wholesale Special Access service . . . and also must advise the Requesting Carrier of the date on which the service shall be installed. In the event facilities . . . are not available [this measure tracks] the date by which the Provisioning Carrier must: (1) advise the Requesting Carrier of the facilities that are not available; and (2) provide the Requesting Carrier with a good faith estimate of the date on which the requested service shall be installed"	This proposed measure is purely diagnostic. It will assist in tracking the engineering progress of requests for wireless wholesale special access circuits, which process currently is not tracked and often is unduly lengthy.
"Firm Order Confirmation" - for wireless providers, a measure to track "the document or electronic record by which a Provisioning Carrier notifies a Requesting Carrier of the date on which an ordered service shall be installed."	This proposed measure is purely diagnostic. It will assist in tracking the progress of requests for wireless wholesale special access circuits and establishing due dates, which currently are not provided on a timely basis.
"FOC/EC Past Due" - a measure to track "the number of a Requesting Carrier's Wholesale Special Access service orders in connection with which a Provisioning Carrier has not provided an FOC/EC as of the end of each month"	This proposed measure is simply a corollary of "Firm Order Confirmation".
"Past Due Circuits" - a measure to track "the total number of Wholesale Special Access circuits a Provisioning Carrier fails to install for a Requesting Carrier on or before the FOC/EC due date"	This proposed measure is purely diagnostic and is a corollary of Ameritech's "On Time Performance" metric.

¹¹ The Wireless Coalition's additional proposed performance measures are closely related to measures SBC/Ameritech and Verizon currently report or track and each relates to an aspect of service in connection with which Wireless Coalition members experience significant problems. (See generally Wireless Coalition Ex. 1.0 - 7.0.) As noted in this chart, four of the six additional proposed measures are purely diagnostic, thus, the failure to satisfy these measures will not trigger a remedy. (See Wireless Coalition Br. Ex. A at § 731.315.)